

Section 2(a) of the Telecommunications Excise Tax Act states that gross charges means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer. See 35 ILCS 630/2(a). (This is a GIL.)

December 11, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter received July 2, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am in a management position at the BUSINESS store in CITY, IL. We sell prepaid phone cards, which allows a person to pay for \$10 or \$20 worth of phone calls now and use the card later when the calls are actually made. We have treated these items as any other type of merchandise, and consequently have been charging full Illinois state sales tax on the retail price of these cards.

On June 29, 1998, a customer complained to me that these items represent a service and should be exempt from Illinois sales tax. I would like a letter ruling which indicates the state's view of these items. Should we collect sales tax or not?

I appreciate your time on this matter.

Section 2(a) of the Telecommunications Excise Tax Act states that gross charges means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer. See 35 ILCS 630/2(a). Charges for services that are provided by telecommunications retailer that are necessary for, or are directly related to, the retailers' provision of telecommunications to their customers are included in gross receipts subject to the tax. Gross charges do not include charges for customer equipment, including equipment that is leased or rented by the customer from any source, when such charges are disaggregated and separately identified from other charges in the books and records of the retailer.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of

various fees upon telecommunications retailers. Please note that other local taxes may also apply to telecommunications.

At the present time, the Illinois Retailers' Occupation Tax does not apply to sales of prepaid telephone calling cards by retailers to customers. The Illinois Telecommunications Excise Tax consequences from sales of telephone cards would vary depending upon whether we would consider the sellers to be retailers of telecommunications.

Retailers who purchase telephone cards from telephone service vendors and then resell the cards to customer for marked-up prices are not responsible for collecting and remitting the Telecommunications Excise Tax from the customers. The excise tax is incurred at the time the telecommunications originate or are received in a taxable manner, and the amount of telecommunications charges for which the cards are redeemed by the telephone service providers should include any amount of Telecommunications Excise Tax incurred.

The telephone service providers charge the phone calls and the tax against the balance of the cards as they are responsible for collecting and remitting the tax.

On the other hand, sellers that purchase telecommunications units from telephone service providers and sell them at retail to customers present situations similar to hotels that sell telecommunications services. See 86 Ill. Adm. Code 495.110, enclosed. In these cases the sellers would be required to register as telecommunications retailers and collect and remit Telecommunications Excise Tax. The tax base would be the amounts charged to card purchasers for the taxable services subsequently provided (i.e. calls that originate or terminate in Illinois).

When cards are sold in Illinois, the Department presumes calls will originate or terminate in this State. Retailers have the burden to establish that charges are exempt from the Telecommunications Excise Tax. The only way to document this would be through records of the telephone service providers. Therefore, as a practical matter, because retailers will not know when sales are made what taxable services cardholders will later consume, retailers should charge the tax on the full sales prices of the cards.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.